

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

James H. Dillard II,

Plaintiff,

v.

Damon Lovell, Marquis Edwards, and Kenneth
Rucker,

Defendants.

Case No. 2:23-cv-01242-CDS-DJA

Order

Under 28 U.S.C. § 1915 Plaintiff is proceeding in this action *pro se* and has requested authority to proceed *in forma pauperis*. (ECF No. 1). Plaintiff also submitted a complaint. (ECF No. 1-1). Because the Court finds that Plaintiff's application is complete, it grants his application to proceed *in forma pauperis*. However, because the Court finds that Plaintiff's complaint does not properly assert sufficient facts, it dismisses his complaint with leave to amend.

I. *In forma pauperis* application.

Plaintiff filed the affidavit required by § 1915(a). (ECF No. 1). Plaintiff has shown an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed *in forma pauperis* will be granted under 28 U.S.C. § 1915(a). The Court will now review Plaintiff's complaint.

II. Screening the complaint.

Upon granting an application to proceed *in forma pauperis*, courts additionally screen the complaint under § 1915(e). Federal courts are given the authority to dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the

1 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
2 F.3d 1103, 1106 (9th Cir. 1995).

3 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a
4 complaint for failure to state a claim upon which relief can be granted. Review under Rule
5 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d
6 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of
7 the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp.*
8 *v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual
9 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the
10 elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v.*
11 *Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all well-pled factual allegations
12 contained in the complaint, but the same requirement does not apply to legal conclusions. *Iqbal*,
13 556 U.S. at 679. Mere recitals of the elements of a cause of action, supported only by conclusory
14 allegations, do not suffice. *Id.* at 678. Secondly, where the claims in the complaint have not
15 crossed the line from conceivable to plausible, the complaint should be dismissed. *Twombly*, 550
16 U.S. at 570. Allegations of a *pro se* complaint are held to less stringent standards than formal
17 pleadings drafted by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding
18 that liberal construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

19 Federal courts are courts of limited jurisdiction and possess only that power authorized by
20 the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Under 28 U.S.C.
21 § 1331, federal courts have original jurisdiction over “all civil actions arising under the
22 Constitution, laws, or treaties of the United States.” Cases “arise under” federal law either when
23 federal law creates the cause of action or where the vindication of a right under state law
24 necessarily turns on the construction of federal law. *Republican Party of Guam v. Gutierrez*, 277
25 F.3d 1086, 1088-89 (9th Cir. 2002). Whether federal-question jurisdiction exists is based on the
26 “well-pleaded complaint rule,” which provides that “federal jurisdiction exists only when a
27 federal question is presented on the face of the plaintiff’s properly pleaded complaint.”
28 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Under 28 U.S.C. § 1332(a), federal

1 district courts have original jurisdiction over civil actions in diversity cases “where the matter in
 2 controversy exceeds the sum or value of \$75,000” and where the matter is between “citizens of
 3 different states.” Generally speaking, diversity jurisdiction exists only where there is “complete
 4 diversity” among the parties; each of the plaintiffs must be a citizen of a different state than each
 5 of the defendants. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996).

6 ***A. The Court dismisses Plaintiff’s complaint without prejudice.***

7 Plaintiff’s complaint lacks sufficient facts to state a claim upon which relief can be
 8 granted. Instead of including the facts underlying his action in his complaint, Plaintiff refers the
 9 Court to the “attached complaint filed with YouTube.” (ECF No. 1-1). Plaintiff has attached a
 10 letter that an attorney sent on his behalf to YouTube, emails between him and YouTube, and
 11 YouTube screenshots. But even considering that Plaintiff is referring to the letter his attorney
 12 sent to YouTube, that letter does not contain sufficient facts for the Court to find a colorable
 13 cause of action or to find that it has jurisdiction over the matter. This is especially true because
 14 the letter only references libel, a Nevada state law claim, and does not mention any federal causes
 15 of action. The Court thus dismisses Plaintiff’s complaint without prejudice and with leave to
 16 amend. In any amended complaint, Plaintiff must allege what happened, when it happened, what
 17 causes of action he brings, and the basis for this Court’s jurisdiction—whether federal question or
 18 diversity jurisdiction, as outlined above—over his claims in his complaint.

19
 20 **IT IS THEREFORE ORDERED** that Plaintiff’s application to proceed *in forma*
 21 *pauperis* (ECF No. 1) is **granted**. Plaintiff shall not be required to pre-pay the filing fee.
 22 Plaintiff is permitted to maintain this action to conclusion without the necessity of prepayment of
 23 any additional fees or costs or the giving of a security therefor. This order granting leave to
 24 proceed *in forma pauperis* shall not extend to the issuance and/or service of subpoenas at
 25 government expense.

26 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to file Plaintiff’s
 27 complaint (ECF No. 1-1) on the docket but shall not issue summons.
 28

1 **IT IS FURTHER ORDERED** that the complaint (ECF No. 1-1) is **dismissed without**
2 **prejudice** for failure to state a claim upon which relief can be granted, with leave to amend.
3 Plaintiff will have until **November 27, 2023** to file an amended complaint if the noted
4 deficiencies can be corrected. If Plaintiff chooses to amend the complaint, Plaintiff is informed
5 that the Court cannot refer to a prior pleading (i.e., the original complaint) to make the amended
6 complaint complete. This is because, generally, an amended complaint supersedes the original
7 complaint. Local Rule 15-1(a) requires that an amended complaint be complete without reference
8 to any prior pleading. Once a plaintiff files an amended complaint, the original complaint no
9 longer serves any function in the case. Therefore, in an amended complaint, as in an original
10 complaint, each claim and the involvement of each Defendant must be sufficiently alleged.
11 **Failure to comply with this order will result in the recommended dismissal of this case.**

12
13 DATED: October 27, 2023.



DANIEL J. ALBRECHTS
UNITED STATES MAGISTRATE JUDGE